



HON. SYLVIA O. HINDS-RADIX
Corporation Counsel

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NEW YORK 10007

AMY ROBINSON
Senior Counsel
arobinso@law.nyc.gov
Phone: (212) 356-3518
Fax: (212) 356-1148

May 24, 2023

By ECF

Honorable Gabriel W. Gorenstein
United States Magistrate Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

In Re: *New York City Policing During Summer 2020 Demonstrations*,
No. 20 Civ. 8924 (CM) (GWG)
This filing is related to all cases

Your Honor:

I am a Senior Counsel in the Office of the Honorable Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, and I am among counsel for the defense in the above-referenced matter. Pursuant to the Court's ruling during the Court Conference held on March 6, 2023 (Trans. pp 68–69), Defendants further move to preclude the depositions of certain Legal Bureau attorneys of the New York City Police Department ("NYPD").

As the Court may recall, Defendants moved to preclude the depositions of Judge Ernest Hart, former Deputy Commissioner of Legal Matters; and Chief of Staff Oleg Chernyavsky, former Assistant Deputy Commissioner of Legal Matters, by letter to the Court dated February 8, 2023 (Dkt. No. 841). Plaintiffs filed an opposition to the original moving papers on February 15, 2023 (Dkt. No. 855). Defendants filed a reply dated February 22, 2023 (Dkt. No. 872). On March 6, 2023, the Court ordered the parties to submit supplemental arguments pertaining to Defendants' motion to preclude the depositions of these high-ranking NYPD Legal Bureau attorneys. (*See* March 6 Tr. at 68:18–69:05). Specifically, the Court ordered Plaintiffs to provide Defendants with "a list of deposition topics that [they] were thinking [they] were going to ask [Hart and Chernyavsky]" within two weeks after the hearing (*i.e.*, by March 20, 2023). (March 6 Tr. at 68:18–21). The Court further deferred decision until after Plaintiffs had taken the deposition of Sergeant Kenneth Rice, an attorney in the Legal Bureau, which was scheduled for March 29th. Defendants renewed their application by letter dated April 7, 2023 (Dkt. No. 926) and Plaintiffs filed a further response on April 9, 2023 (Dkt. No. 929). The Court gave Plaintiffs another

opportunity to submit the topics (Dkt 930), which they did on April 14. On April 21, the Parties requested that this motion be deferred to May 24, after Sgt. Kenneth Rice's deposition was completed. (Dkt. 951). As such, the Court so-ordered that further motions be made by May 24, 2023. (Dkt. 952).

Plaintiffs have now provided the list of deposition topics that they believe these deponents possess unique knowledge of and which Plaintiffs intend to use to question Judge Hart and former ADC Chernyavsky. *See Exhibit A hereto.* To a large extent, these topics are either duplicative of Plaintiffs' deposition notice pursuant to Rule 30(b)(6), or else seek to probe conversations and discussions that are protected by multiple privileges including Attorney Client and Deliberative Process. For example, Plaintiffs propose to question Judge Hart—the former Deputy Commissioner for Legal Matters—on “[m]eetings attended regarding interpretation and enforcement of the Curfew Orders and the decisions made, and the rationale for those decisions.” (Ex. A at Hart #6). Meanwhile, the City has already agreed to produce, and has scheduled for June 1, the deposition of Executive Agency Attorney James Conroy, who will be prepared to testify on many of the overlapping topics listed in Plaintiffs' 30(b)(6) notice, such as “[t]he role of the Legal Bureau in the Summer 2020 Protests[.]” (Topic 14 in the 30(b)(6) Notice).

Plaintiffs have also been given the opportunity to depose two other members of the NYPD Legal Bureau who were on the ground during the Summer 2020 Protests: Lieutenant (ret.) Daniel Gallagher and Sergeant Kenneth Rice. Lt. Gallagher was deposed for seven full hours on March 22, 2023, and Defendants have even agreed to re-produce him for an additional 3.5 hours of testimony on May 30. Furthermore, Sgt. Rice has now been deposed for a total of seven hours over two days. While it is not Defendants' place to tell Plaintiffs how to conduct their depositions, we will note for the Court that a great deal of the information they have sought or will seek from Judge Hart and ADC Chernyavsky was either elicited from Lt. Gallagher and Sgt. Rice, or else could have been had Plaintiffs chosen to use their deposition time differently. For example, Plaintiffs' counsel spent more than 30 minutes on the record arguing with Sgt. Rice about what was depicted in a video from one of the protests. Much of the questioning of Lt. Gallagher and Sgt. Rice appeared geared toward unsuccessfully impugning their credibility rather than a serious inquiry into the facts that Plaintiffs purport to be seeking about the role of the Legal Bureau during the Summer 2020 Protests.

Defendants maintain that between the depositions already allowed, and the imminent 30(b)(6) deposition on topics related to the Legal Bureau, Plaintiffs have had, or will have had ample opportunity to explore the relevant information that they are seeking about the role of the Legal Bureau and its attorneys during and after the Summer 2020 Protests. There is no need to burden the most senior attorneys who they are seeking to depose. Moreover, given their seniority and involvement with many policy-related decisions, many of the questions Plaintiffs intend to pose to Judge Hart and ADC Chernyavsky will merely result in assertions of privilege rather than the substantive testimony they purport to seek. Thus, defendants maintain that there is no good cause to allow Plaintiffs an opportunity to depose Judge Hart or ADC Chernyavsky.

Accordingly, Defendants' motion for a protective order should be granted to preclude the depositions of Judge Hart and/or ADC Chernyavsky.

Thank you for Your Honor's consideration herein.

Respectfully submitted,

Amy Robinson s/

Amy Robinson
Senior Counsel

cc: ALL COUNSEL (*via* ECF)